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STATUTORY RULES OF NORTHERN IRELAND

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**2007 No. 345**

**The Conservation (Natural Habitats, etc.)  
(Amendment) Regulations (Northern Ireland) 2007**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 21<sup>st</sup> August 2007.

(2) The Interpretation Act (Northern Ireland) 1954(1) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendments to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995**

2. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(2) are amended in accordance with regulations 3 to 36.

3. In regulation 2 (interpretation and application)—

(a) in paragraph (2)—

(i) in the appropriate places insert the following definitions—

““the EC Treaty” means the Treaty establishing the European Community(3);

“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(4);”;

(ii) for the definition of “the Habitats Directive” substitute—

““the Habitats Directive” has the meaning given by paragraph (2A);” and

(iii) for the definition of “the Wild Birds Directive”(5) substitute—

““the Wild Birds Directive” has the meaning given by paragraph (2A).”.

(b) after paragraph (2) insert the following paragraph—

“(2A) In these Regulations—

(a) subject to subparagraph (b)—

(i) “the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora as last amended

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(1) [1954 c.33 \(N.I.\)](#).

(2) [S.R. 1995 No.380](#) as amended by [S.R. 2004 No.435](#) and [S.R. 2003 No.46](#).

(3) A consolidated version can be found at O.J. No. C321E, 29.12.06.

(4) [S.I. 2007 No. 1842](#).

(5) Council Directive [79/409/EEC](#) on the conservation of wild birds was last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

by Council Directive [2006/105/EC](#) of 20th November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania; and

(ii) “the Wild Birds Directive” means Council Directive [79/409/EEC](#) on the conservation of wild birds as last amended by Council Directive [2006/105/EC](#) of 20th November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania; and

(b) references to any Annex to the Habitats Directive are references to that Annex as amended from time to time.”

4. After regulation 9 (meaning of “European Site” in these Regulations) insert—

**“Surveillance of conservation status of habitats and species**

**9A.—**(1) The Department shall make arrangements for the surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Department considers that the results of surveillance arranged under paragraph (1), or otherwise arranged for the purpose of Article 11 of the Habitats Directive, makes it necessary to do so, it shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at a favourable conservation status.

(3) Any arrangements to be made under paragraph (2) shall include arrangements for the continuation of the surveillance under paragraph (1), for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, are compatible with their being maintained at a favourable conservation status.

(4) The Department shall, from time to time, review the arrangements made under paragraphs (1), (2) and (3) and if appropriate, revise those arrangements.

(5) In this regulation in relation to any marine area for the words “the Department” where they occur substitute “the Secretary of State”.”

5. For regulation 34 (protection of wild animals) substitute—

**“Protection of wild animals**

**34.—**(1) It is an offence—

(a) deliberately to capture, injure or kill a wild animal of a European protected species;

(b) deliberately to disturb such an animal—

(i) while it is occupying a structure or place which it uses for shelter or protection;

(ii) in such a way as to be likely to—

(a) affect the local distribution or abundance of the species to which it belongs, or

(b) impair its ability to breed or reproduce, or rear or care for its young;

(c) deliberately to take or destroy the eggs of such an animal;

- (d) deliberately to obstruct access to a breeding site or resting place of such an animal;  
or
  - (e) to damage or destroy a breeding site or resting place of such an animal.
- (2) It is an offence for any person—
- (a) to have in his possession or control,
  - (b) to transport,
  - (c) to sell or exchange, or
  - (d) to offer for sale or exchange,
- any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.
- (3) The offences in paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.
- (4) Subject to paragraph (5), a person shall not be guilty of an offence under paragraph (2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or the thing in question is derived, was lawfully taken from the wild.
- (5) The defence in paragraph (4) does not apply—
- (a) in respect of the offences in paragraph (2)(a) and (b) if—
    - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal, and
    - (ii) the animal, part or thing in question was in the defendant's possession, or transported by the defendant, for the purpose of sale or exchange;
  - (b) in respect of the offences in paragraph (2)(c) and (d) if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.
- (6) For the purposes of paragraph (4) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if—
- (a) it was taken from the wild in the European territory of a member State to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere.
- (7) Unless the contrary is shown, in any proceedings—
- (a) for an offence under paragraph (1), the animal in question shall be presumed to have been a wild animal; and
  - (b) for an offence under paragraph (2)—
    - (i) the animal or part of the animal in question shall be presumed to have been taken from the wild;
    - (ii) the part or thing in question shall be presumed to be from an animal taken from the wild.
- (8) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything mentioned in sub-paragraph (a), (b) or (c) of that paragraph merely because—
- (a) his actions had the result that he did the thing in question; and
  - (b) he intended those actions and knew that they might have that result.

- (9) Paragraph (8) applies where the defendant shows that—
- (a) the actions in question were for the purpose of, and in the course, of sea fishing;
  - (b) he did not intend those actions to have the result in question; and
  - (c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.
- (10) In paragraph (9), “any relevant Community instrument” means any instrument relating to sea fisheries which—
- (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (8) or the risk that it may have a result of that kind; and
  - (b) is adopted by any Community institution under—
    - (i) Article 37(2) of the EC Treaty; or
    - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>(6)</sup> or under any instrument adopted thereunder.
- (11) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) In this regulation—
- “the implementation date” means—
- (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
  - (b) in any other case, the date on which the relevant State became a member State;
- “relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.”.

**6. For regulation 35 (exceptions from regulation 34) substitute—**

**“Exceptions from regulation 34**

- 35.—**(1) A person shall not be guilty of an offence under regulation 34(1)(a) or (b) or under regulation 34(2)(a) or (b) if he shows that the contravention in question—
- (a) was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and there was no reasonable chance of its recovering, and
  - (b) was done solely for one or more of the purposes of—
    - (i) ending the animal’s life, or
    - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.
- (2) A person shall not be guilty of an offence under regulation 34(1) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 34(2)(a) or (b), if he shows that the contravention in question—
- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act, and
  - (b) was done solely for one or more of the purposes of—
    - (i) tending it and releasing it when no longer disabled, or

(ii) releasing it after it had been tended.”

7. For regulation 36 (prohibition of certain methods of taking or killing wild animals) substitute—

**“Prohibition of certain methods of capturing or killing wild animals**

**36.—**(1) This regulation applies in relation to the capturing or killing of a wild animal—

- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Northern Ireland), or
- (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.

(2) It is an offence to use for the purpose of capturing or killing any such wild animal—

- (a) any of the means listed in paragraph (3) or (4),
- (b) any form of capturing or killing from the modes of transport listed in paragraph (5), or
- (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal referred to in paragraph (1).

(3) The prohibited means of capturing or killing of mammals are—

- (a) blind or mutilated animals used as live decoys;
- (b) tape recorders;
- (c) electrical and electronic devices capable of killing or stunning;
- (d) artificial light sources;
- (e) mirrors and other dazzling devices;
- (f) devices for illuminating targets;
- (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
- (h) explosives;
- (i) nets which are non-selective according to their principle or their conditions of use;
- (j) traps which are non-selective according to their principle or their conditions of use;
- (k) crossbows;
- (l) poisons and poisoned or anaesthetic bait;
- (m) gassing or smoking out; or
- (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.

(4) The prohibited means of capturing or killing fish are—

- (a) poison; or
- (b) explosives.

(5) The prohibited modes of transport are—

- (a) aircraft; or
- (b) moving motor vehicles.

(6) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

8. After regulation 36 (prohibition of certain methods of taking or killing wild animals) insert the following regulation—

**“Monitoring incidental capturing and killing**

**36A.**—(1) The Department shall make arrangements to establish a system for monitoring the incidental capture and incidental killing which takes place in Northern Ireland of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) In light of the information gathered from monitoring arranged under paragraph (1), or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, the Department shall make arrangements for the carrying out of further research for, or the taking of conservation measures as are necessary for, ensuring that such incidental capture or incidental killing does not have a significant negative impact on the species in question.

(3) The Department shall review the arrangements made under paragraphs (1) and (2) and if necessary revise those arrangements.

(4) In this regulation in relation to any marine area for the words “the Department” where they occur substitute “the Secretary of State”.”

9. For regulation 38 (protection of wild plants) substitute the following regulation—

**“Protection of wild plants**

**38.**—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

any live or dead plant which is taken in the wild and is of a species listed in Annex II(b) (other than a bryophyte) or Annex IV(b) to the Habitats Directive, or any part of, or anything derived from, such a plant.

(3) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(4) Subject to paragraph (5), a person shall not be guilty of an offence under paragraph (2) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.

(5) The defence in paragraph (4) does not apply—

- (a) in respect of the offences in paragraph 2(a) and (b) if—
  - (i) the plant in question is of a European protected species, or the part or thing in question is derived from such a plant; and
  - (ii) the plant, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange;
- (b) in respect of the offences in paragraph 2(c) and (d) if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant.

(6) For the purposes of paragraph (4) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—

- (a) it was taken in the wild in the European territory of a member State to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
- (b) it was taken in the wild elsewhere.

(7) Unless the contrary is shown, in any proceedings—

- (a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and
- (b) for an offence under paragraph (2)—
  - (i) the plant or part of the plant in question shall be presumed to have been taken in the wild;
  - (ii) the part or thing in question shall be presumed to be from a plant taken in the wild.

(8) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.”.

**10.** In regulation 39 (grant of licences for certain purposes) after paragraph (2) insert the following paragraphs—

“(2A) Subject to paragraph (2B), the Department may grant a licence to permit the taking or the possession or control of certain specimens of the species listed in Annex II(b) (other than a bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The Department shall only grant a licence under paragraph (2A) where it is satisfied that the grant of licence would be compatible with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”).

(2C) Regulations 34, 36 and 38 do not apply to anything done under and in accordance with the terms of a licence granted by the Department under paragraph (2A).”.

**11.** In regulation 40 (licences: supplementary provisions)—

(a) in paragraph (1) for “A licence” substitute “Subject to the provisions of this regulation, a licence”;

(b) after paragraph (1) insert the following paragraph—

“(1A) A licence granted under 39(2A) may only be granted to such persons as are named under the licence.”; and

(c) after paragraph (4) insert the following paragraph—

“(5) A licence granted under regulation 39(2A) shall specify—

- (a) the species of animal or plant to which the licence relates;
- (b) the maximum number of specimens which any person authorised by the licence may take or have in his possession or under his control, or which particular specimens that person may take or have in his possession or under his control;
- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
  - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of any person authorised by licence,
  - (ii) when or over what period the action authorised by the licence may be taken, and
  - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.”

12. After regulation 41 (false statements made for obtaining licence) insert the following regulation—

**“Offence of breaching licence condition**

41A.—(1) It is an offence for any person authorised by virtue of a licence to which paragraph (4) applies to contravene or fail to comply with any condition which the licence requires him to comply with.

(2) A person shall not be guilty of an offence under paragraph (1) if he shows—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) that the commission of the offence was otherwise due to matters beyond his control.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) This paragraph applies to a licence granted under regulation 39 on or after 21<sup>st</sup> August 2007.”.

13. In regulation 42 (application of provisions of this Part)—

- (a) in paragraph (1)(a) after “European sites” insert “in Northern Ireland and European offshore marine sites”; and
- (b) in paragraph (2)(b) after “European site” insert “in Northern Ireland or a European offshore marine site”.

14. For regulation 43 (assessment of implications for European site) substitute—

**“Assessment of implications for European sites in Northern Ireland and European offshore marine sites**

43.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site in Northern Ireland or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,



shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying for such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require—

- (a) to enable the competent authority to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(3) In relation to a European site in Northern Ireland, the competent authority shall for the purposes of—

- (a) determining whether an assessment is required for a plan or project under paragraph (1); or
- (b) the assessment under paragraph (1)

consult the Department and have regard to any representations made by it within such reasonable time as the competent authority may specify.

(4) The competent authority shall, for the purposes of any appropriate assessment relating to a European offshore marine site, consult the Joint Nature Conservation Committee and have regard to any representations made by that committee within such reasonable time as the competent authority may specify.

(5) The competent authority shall, if it considers it appropriate, take such steps as it considers necessary to obtain the opinion of the general public.

(6) In the light of the conclusions of the assessment, and subject to regulation 44, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site in Northern Ireland or the European offshore marine site (as the case may be).

(7) In considering whether a plan or project will adversely affect the integrity of the site concerned, the authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposed that the consent, permission or other authorisation should be given.

(8) This regulation does not apply in relation to a site which is—

- (a) a European site in Northern Ireland by reason only of regulation 9(1)(c) (site protected in accordance with Article 5(4)); or
- (b) a European offshore marine site by reason only of its being a site of the kind mentioned in regulation 15(c) (site protected in accordance with Article 5(4)) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.”.

**15.** In regulation 44 (considerations of overriding public interest)—

- (a) in paragraph (1) for “the site” substitute “the site concerned”;
- (b) for paragraph (2)(b) substitute—
  - “(b) any other imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.”; and
- (c) in paragraph (5) after “a European site” insert “in Northern Ireland”;
- (d) for paragraph (6) substitute the following paragraphs—
  - “(6) Where an authority, other than the Department, proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site—

- (a) it shall notify the Department and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Department that the Department and the Secretary of State have agreed that it may do so.

(7) Where the Department proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site—

- (a) it must notify the Secretary of State; and
- (b) it may agree to the plan or project only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(8) In any case within paragraph (5) or (6), the Department may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Department in relation to the decision in question.

(9) Any agreement between the Department and the Secretary of State that is the subject of a notification under paragraph (6)(b) may be subject to such conditions or restrictions as may be specified in the notification.”

**16.** In regulation 45 (review of existing decisions and consents, etc.)—

- (a) in paragraph (1) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (b) in paragraph (2)—
  - (i) for “the site” substitute “the site concerned”; and
  - (ii) for “regulation 43(2) to (4)” substitute “regulation 43(2) to (5)”.

**17.** In regulation 46 (consideration on review)—

- (a) in paragraph (2) for “regulation 43(5) and (6)” substitute “regulation 43(6) and (7)”; and
- (b) in paragraph (3) for “the site” substitute “the site concerned”.

**18.** In regulation 47 (co-ordination where more than one competent authority involved)—

- (a) in paragraph (3)(a) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (b) in paragraph (3)(b) after “European site” insert “in Northern Ireland or a European offshore marine site”.

**19.** In regulation 48 (compensatory measures) in subparagraph (a) after “European site” insert “in Northern Ireland or a European offshore marine site”.

**20.** In regulation 49 (planning decisions)—

- (a) in paragraph (1)—
  - (i) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
  - (ii) at the end of subparagraph (d) delete the word “and”; and
  - (iii) for subparagraph (e) substitute—
    - “(e) stating under Article 95(1)(c)(i) of the 1991 Order (action by the Department following service of purchase notice) that planning

- permission for any other development might reasonably be expected to be granted; and
- (f) directing, under paragraph 3 of Schedule 8 to the Electricity (Northern Ireland) Order 1992(7) that planning permission shall be deemed to be granted.”.
- (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (c) in paragraph (3) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 21.** In regulation 51 (planning permission: consideration on review) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 22.** In regulation 53 (effect of discontinuance orders made on review) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 23.** In paragraph (1) of regulation 55 (general development orders)—
- (a) in subparagraph (a) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (b) for the word “determination” to the end substitute “notification from the Department under regulation 56 of its approval for the commencement of the development.”
- 24.** For regulation 56 (general development orders: determination by Department) substitute the following regulation—

**“General development orders: approval of the Department**

**56.—**(1) Where it is intended to carry out development in reliance upon a permission granted by a general development order, application may be made in writing to the Department for its approval for the commencement of the development.

(2) The application shall give details of the development which is intended to be carried out.

(3) The Department may request such further information from the applicant as it considers necessary to determine an application under this regulation.

(4) Where the Department receives an application under paragraph (1) it shall, if a European offshore marine site exists—

(a) forward that application to the Joint Nature Conservation Committee (“the Committee”); and

(b) request the opinion of the Committee on whether the development is likely to have a significant effect on a European offshore marine site (whether alone or in combination with other plans or projects).

(5) If, after consultation with the Committee or otherwise, the Department considers that the development is not likely to have such an effect as is mentioned in regulation 55(1)

(a) it shall notify the applicant in writing of its approval for the commencement of the development.

(6) If, after consultation with the Committee or otherwise, the Department considers that the development is likely to have such an effect as is mentioned in regulation 55(1)

(a) it shall make an appropriate assessment of the implications of the development for the European site in Northern Ireland or, as the case may be, the European offshore marine

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(7) S.I. 1992/231 (N.I. 1) as amended by S.I. 2006/2955 (N.I. 19).

site, in view of that site's conservation objectives and, in light of the conclusions of the assessment the Department shall approve the commencement of the development only after having ascertained that it will not adversely affect the integrity of the site.

(7) Where, in response to a request from the Department under paragraph (4)(b) the Committee provides an opinion that the development is likely to have the effect stated in that paragraph, the Department, in making an appropriate assessment under paragraph (6), shall take account of any representations made by the Committee in relation to the development.

(8) The provisions of Articles 32 and 33 of the 1991 Order shall, subject to any necessary modifications, apply to an application under this regulation, and to the determination thereof, as they apply to applications for planning permission under the 1991 Order and to the determination of such applications.”.

25. In regulation 57 (special development orders)—

- (a) in the heading to the regulation after “orders” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European site” insert “in Northern Ireland”.

26. After regulation 57 (special development orders) insert the following regulation—

**“Special development orders and European offshore marine sites**

57A. A special development order made after the 21<sup>st</sup> August 2007 may not grant planning permission for development which is likely to have a significant effect on a European offshore marine sites (either alone or in combination with other plans or projects).”.

27. In regulation 58 (simplified planning zones)—

- (a) in the heading to the regulation after “zones” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European site” insert “in Northern Ireland”.

28. After regulation 58 (simplified planning zones) insert the following regulation—

**“Simplified planning zones and European offshore marine sites**

58A. The adoption of a simplified planning zone scheme after the 21<sup>st</sup> August 2007 shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.

29. In regulation 59 (enterprise zones)—

- (a) in the heading to the regulation after “zones” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European sites” insert “in Northern Ireland”.

30. After regulation 59 (enterprise zones) insert the following regulation—

**“Enterprise zones and European offshore marine sites**

59A. An order designating an enterprise zone, or the adoption of a modified scheme, if made or adopted after the 21<sup>st</sup> August 2007, shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.

- 31.** In regulation 62 (construction of roads)—
- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”; and
  - (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 32.** In regulation 63 (licences under Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997)—
- (a) in paragraph (1) for “a European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
  - (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
  - (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 33.** In regulation 63A (permits under the Pollution Prevention and Control Regulations (Northern Ireland) 2003)—
- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
  - (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
  - (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 34.** In regulation 64 (discharge consents under water pollution legislation)—
- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
  - (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
  - (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.
- 35.** After Part IV (adaptation of planning and other controls) insert a new Part IVA as set out in the Schedule to these Regulations.
- 36.** After regulation 72 insert the following regulations—

**“Application of criminal offences to the Crown**

**73.**—(1) No contravention by the Crown of any provision made by these Regulations makes the Crown criminally liable; but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.

**Advisory role of the JNCC**

**74.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question about whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
  - (b) any appropriate assessment upon which that authority is obliged to consult it under these Regulations;
  - (c) any application made pursuant to paragraph (1) of regulation 56 and sent to the Committee by that authority pursuant to paragraph (4)(a) of that regulation.
- (2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and other scientific work which it considers is required for the purposes of providing advice or making representations under this regulation.
- (3) In this regulation “research” includes inquiries and investigations.”.

### **Amendments to the Wildlife (Northern Ireland) Order 1985**

- 37.** The Wildlife (Northern Ireland) Order 1985(8) is amended as follows.
- 38.** In the list of animals contained in Schedule 5 (animals which are protected at all times)—
- (a) delete the entries relating to “Bats (all species)”, “Cetaceans (all species)” and “Otter, Common”;
  - (b) in the column entitled “Common name” after “Marten, Pine” insert “Mussel, Freshwater”;
  - (c) in the column entitled “Scientific name” after “Martes Martes” insert “Margaritifera margaritifera”.
- 39.** In the list of animals in Schedule 7 (animals which may not be sold alive or dead at any time) delete the entries relating to “Bats (all species)” and “Otter, Common”.
- 40.** In the list of plants in Schedule 8 (plants which are protected under Article 14(1)(a) and (2)) delete the entries relating to “Fern, Killarney” and “Saxifrage, Yellow Marsh”.

Sealed with the Official Seal of the Department of the Environment on 24th July 2007.



*Wesley Shannon*  
A senior official of the Department of the  
Environment